

1 and independent method claims 10, 15, 22 and 28. Claims 1, 3, 4, 8, 10, 15 and 17 have been clarified by amendment.

Applicants' representative would like to thank the Office for taking the time to grant us a personal interview on October 24, 2001. Applicants appreciate the acknowledgement that independent claim 15, from which claims 16, 17 and 19 to 21 depend, is allowable unless new art is found.

Claims 14 to 21 were rejected under 35 USC 112, first paragraph, for not reasonably providing enablement as to the prevention of skin ailments. Claims 14, 15 and 17 have been amended as indicated above, and are now believed to overcome the rejection raised by the Office. Accordingly, reconsideration and withdrawal of the foregoing rejection is earnestly requested.

Claims 2, 3, 8, 11, 12, 20, 21 and 24 were rejected under 35 USC 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter of the invention. During the personal interview, it was noted by Applicants' representative that, as for claims

myrtle extract is not vague or indefinite. As substantiated on page 5, lines 12 to 15, the extract's concentration is based on the active amount of extract present in the absence of diluent, solvent, or any other ingredient added for bulk. Also, claims 2 and 8 have been amended as indicated above. All claims of the foregoing rejection are now believed to overcome the rejection raised by the Office. Accordingly, reconsideration and withdrawal of the 112, second paragraph, rejection is earnestly requested.

It is respectfully submitted that the amendments made to the claims are neither narrowing nor made for substantial reasons related to patentability as defined by the Court of Appeals for the Federal Circuit (CAFC) in Festo Corporation v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd., 95-1066 (Fed. Cir. 2000). Therefore, the amendments do not create prosecution history estoppel and, as such, the doctrine of equivalents is available for all of the elements of the amended claims.

Claims 1, 4 to 6, 8, 10, 22, 23 and 25 were rejected under 35 USC 102(b) as anticipated by the abstract of Japanese Publication No. 07-138135 to Mikimoto

Pharmaceutical Co. Ltd. Nanba Tsuneo (hereinafter "'135 publication").

The '135 publication was cited for disclosing a 5-alpha reductase inhibitor comprising a solvent and an extract of at least one (e.g., *Lagerstroemia speciosa*) kind of plant. However, a translation of the '135 publication substantiates the position argued by Applicants' representative at the interview (i.e., that the '135 publication is directed to hair growth and not to improving the aesthetic appearance of skin, scalp and/or hair). Since independent composition claim 1, from which claims 4 to 6 and 8 depend, and independent method claims 10 and 22, from which claims 23 and 25 depend, are all directed to improving the appearance of skin, scalp and/or hair, Applicants respectfully request reconsideration and withdrawal of the 102(b) rejection of claims 1, 4 to 6, 8, 10, 22, 23 and 25.

Claims 1, 4 to 6, 8, 10, 13 to 15 and 16 were rejected under 35 USC 102(b) as anticipated by the abstract of Japanese Publication No. 07-126143 to Mikimoto Pharmaceutical Co. Ltd. Nanba Tsuneo (hereinafter "'143 publication").

The '143 publication was cited for disclosing a cosmetic containing an extract of *Lagerstroemia speciosa* separated with an extracting solvent. However, the translation of the publication's abstract at page 2, paragraph 0012, discloses the concentration of crape myrtle extract to be 50% of the total composition. Furthermore, the improved translation of the '143 publication provided at the interview substantiates the position that 10g (dry product) of the leaves of *Lagerstroemia speciosa* represents 50% of the total composition. Clearly, this amount is beyond the range claimed in independent composition claim 1, from which claims 4 to 6 and 8 depend.

Independent method claim 10, from which claim 13 depends, is directed to improvements in the aesthetic appearance of skin not disclosed by the '143 publication. Independent claim 15, from which claim 16 depends, as noted in the Interview Summary is clearly not covered by the primary references and appears to be allowable subject to further consideration and an updated search. Accordingly, Applicants respectfully request reconsideration and withdrawal of the 102(b) rejection of claims 1, 4 to 6, 8, 10, 13 to 15 and 16.

Claims 1 to 21 were rejected under 35 USC 103(a) as obvious over the '143 publication, further in view of U.S. Patent No. 5,916,579 to Soudant, et al. (hereinafter, Soudant).

As acknowledged in the Action, the '143 publication does not teach the percentages of the extract claimed in independent claim 1, from which claims 3 to 9 depend. Applicants respectfully submit that the combination of the '143 publication with Soudant does little to alleviate the failure of the '143 publication to disclose Applicants' invention as defined by independent claim 10 which is directed to a method of improving the aesthetic appearance of a group of skin conditions. Applicants assert that because the '143 publication is directed to cosmetics for skin whitening and Soudant is directed to cosmetics for treating adiposity, the combination is an impermissible combination of non-analogous arts that do not meet the burden of *prima facie* obviousness. As indicated in the Interview Summary, independent claim 15, from which claims 16 to 21 depend, appears allowable over the art of record. Accordingly, Applicants respectfully request

reconsideration and withdrawal of the 103(a) rejection of claims 1 to 21.

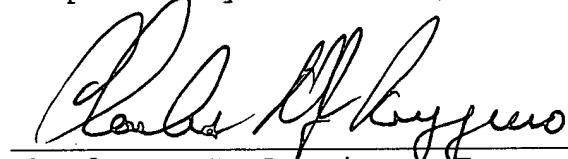
Claims 1 to 6, 8, 10 to 12 and 22 to 25 were rejected under 35 USC 103(a) as obvious over the '135 publication, further in view of U.S. Patent No. 4,839,168 to Abe, et al. (hereinafter, Abe).

Again, as acknowledged in the Action, the '135 publication does not teach the percentages of the extract claimed in independent claim 1, of which claims 3 and 5 to 9 depend. Applicants respectfully submit that the combination of the '135 publication with Abe does not render Applicants' invention as defined by independent claims 1, 10 and 15 obvious. Similarly as stated above, Applicants respectfully submit that the combination of the '135 publication with Abe does little to alleviate the failure of the '135 publication to disclose Applicants' invention as defined by independent claim 10 which is directed to a method of improving the aesthetic appearance of a group of skin conditions. Again, as noted above, independent claim 15, from which claims 16 to 21 depend, appears allowable over the art of record. Also, applicants contend that this combination of references amounts to

hindsight reconstruction of the present invention as claimed, inasmuch as none of the plant extracts of Abe include crape myrtle. Accordingly, Applicants respectfully request reconsideration and withdrawal of the 103(a) rejection of claims 1 to 6, 8, 10 to 12 and 22 to 25.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The first attached page is captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE".

Respectfully submitted,



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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE SPECIFICATION:

Paragraph beginning at line 10 of page 4 has been amended as follows:

Crape myrtle extract contains colosolic [colosic] acid or 2 $\alpha$ -hydroxyursolic acid as one of its constituents. The chemical structure for colosolic [colosic] acid is seen in Table III of Murakami et al., Chem. Pharm. Bull. 41 [12] 2129-2131 (1993), which is incorporated herein by reference in its entirety. Other teachings regarding crape myrtle and *lagerstroemia speciosa* are seen in Kakuda et al., Biosci. Biotech. Biochem. 60 (2) 204-208 (1996) and Kajimoto and Murakami, Nippon Eryo, Shokuryo Gakkaishi 52: 209-218 (1999), both of which are incorporated herein by reference in their entirety.

IN THE CLAIMS:

The following claims were amended as follows:

1. (Amended) A topical composition comprising:

crape myrtle extract in an amount effective to improve the aesthetic appearance of skin, scalp and/or hair, and a cosmetically acceptable vehicle,

wherein the crape myrtle extract is present in an amount from about 0.0001 wt% to about 15 wt% based on the total weight of the composition.

3. (Amended) The composition of claim 1, wherein the crape myrtle extract is present in an amount from about 0.001 wt% to about 10 wt% based on the total weight of the composition.

8. (Amended) The composition of claim 1, wherein the crape myrtle extract includes colosolic [colosic] acid.

10. (Amended) A method of improving the aesthetic appearance of skin, comprising topically applying to the skin:

a composition comprising an effective amount of crape myrtle extract; and

a cosmetically acceptable vehicle,

wherein the improvement in aesthetic appearance is selected from the group consisting of:

a) decreasing skin fragility;  
b) treating and reversing deterioration of collagen and/or elastin;  
c) treating skin atrophy;  
d) promoting/accelerating cell turnover;  
e) improving skin firmness/plumpness;  
f) improving skin texture;  
g) decreasing fine lines and/or wrinkles;  
h) improving skin tone;  
i) enhancing skin thickness;  
j) restoring skin luster;  
k) minimizing signs of fatigue; and  
l) reducing skin dryness.

15. (Amended) A method of treating [preventing] and/or ameliorating the effects of extrinsic and/or intrinsic aging on skin comprising topically applying to the skin a composition comprising an effective amount of crape myrtle extract and a cosmetically acceptable vehicle.

17. (Amended) The method of claim 15, wherein the  
crape myrtle extract is applied to the skin at least once  
daily for a period of time sufficient to treat [prevent]  
and/or ameliorate the effects of skin aging.

Claims 26 to 28 were added.